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C O N F I D E N T I A L SECTION 01 OF 04 GUATEMALA 003211

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SUBJECT: LETTER FROM GUATEMALA (2)

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Classified By: Ambassador John R. Hamilton for reasons 1.5 (b) and (d)

1 (U) This is the second in our planned biweekly series of discursive messages on what's ticking in Guatemala.

Berger Doing Well in One Poll  
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12. (C) Compared to media in other countries, Guatemala's media do not seem particularly interested in keeping tabs on public opinion of how the president is doing. We recently sat down with Felipe Noguera, an Argentine pollster who for the last fourteen years has been hired by local magnate Dionisio Gutierrez to track Guatemalan public reactions for a select, private audience. As expected, crime and security continue to vie with economic issues (jobs, inflation, cost of living, etc.) for the public's concern. The bottom line for the Berger administration was positive: the president went from an approval rating of 82% in February to 44% in July to 62% in November -- a surprising up tick for Berger compared to his predecessors. Noguera indicated that this strong showing could be maintained or even strengthened if the public perceived Berger making progress in the short-term on crime, followed by health care, education and public works. We could not help but notice that military downsizing -- arguably the Berger administration's biggest achievement -- was not even a blip in Noguera's soundings.

UNE's Dirty Laundry  
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13. (U) Jaws are still agape over the acrimonious exchange of accusations between two UNE leaders (and erstwhile friends): former presidential candidate Alvaro Colom and outgoing president of Congress Rolando Morales. Now that their simmering dispute has boiled over in public, Morales has left UNE, claiming he was slandered by Colom's accusations of corruption (reftel para 6).

14. (U) Although Colom made a big splash with sensationalist allegations against Morales of influence peddling, payroll padding, and wiretapping his telephone calls, he backed away from some of these charges when summoned by prosecutors for a deposition. At that point, Colom limited his attack to repeating allegations made by Carlos Quintanilla, a Colom friend and supporter who owns the company hired by Morales to provide private security guards to the Congress. Quintanilla claims that Morales ordered all payments to Quintanilla suspended until Quintanilla agreed to pay him kickbacks of 50,000 quetzales (a little over \$6,000) per month.

15. (C) The two surprised everyone by agreeing to appear together on a radio show. Morales denied the extortion attempt and the wiretapping, and he questioned the relationship between Colom and Quintanilla, noting that Quintanilla had paid for a recent trip to Spain by Colom. On the question of congressional payroll padding, Morales claimed that it was Colom, as UNE secretary general, who had recommended the hiring of 84 "advisors." Morales's steadfast and indignant denials that he had taken a lover on a junket to Indonesia took a pathetic turn when he lamely conceded that "sure, we went to Morocco, but never to Indonesia." Morales managed to get in a few digs at Colom's wife, reinforcing the impression held by many that she is unduly meddling in UNE affairs, promoting her proteges and protecting her business interests.

16. (U) With Morales's exit from UNE, Colom (who finished second in the 2003 presidential election) has one less potential rival to his leadership of the party. The unseemly mudslinging, however, did serious damage to both leaders, who must be betting that voters will have forgotten this mess before the next presidential election in 2007. It prompted the exit from of at least one other congressional deputy, Victor Hugo Toledo, reminding us that this year alone UNE lost seven of its 33 congressional deputies, beginning with Conchita Mazariegos, who told us that, appalled, she left UNE (and founded BIEN) after it became clear to her that the FRG had channeled campaign funds to UNE. Guatemalan political parties are short-lived; at this rate, UNE could be no exception.

PGN Stalemate  
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17. (C) The Constitutional Court appears to have stymied President Berger's effort to rid himself of the last FRG holdover from the previous administration. The Solicitor General (PGN) needs to have the president's confidence since, as the government's top legal counsel, he is expected to defend state interests and advocate administration policies. By a curious quirk of history, however, the PGN's terms of office fell out of sync with presidential terms. The current PGN, Luis Rosales, is a former FRG congressional deputy who in 2002 was named PGN for a four-year term by Alfonso Portillo, who was then president but is now thoroughly discredited and on the lam in Mexico.

18. (C) Berger and others in his administration clearly believe that Rosales, the FRG holdover, is not actively pursuing the president's priorities and may indeed be sabotaging them. When Berger sent Rosales a long list of questions about his handling (or mishandling) of a long list of civil cases involving the state, Rosales correctly interpreted the questionnaire to be a preliminary to his dismissal. He then obtained from the Constitutional Court an injunction barring the government from firing him. Although the Court's order has legal scholars scratching their heads, it has apparently bought Rosales some time while highlighting the need to update the PGN's legal mandate.

#### Military Corruption Cases

19. (U) We mentioned in our last letter the mysterious case of Col. Raul Cerna, the missing former finance chief of the Presidential military staff (EMP) and key witness in efforts to track down the \$115 million or more that went missing in military hands under the Portillo administration. While Guatemalans are still placing bets among themselves over the fate of Cerna, authorities have exhumed a corpse from a local cemetery. The press reported that a dentist identified the remains as Cerna's, but, to be sure, a DNA sample has been sent to Spain to see if it matches samples provided by Cerna's son and father.

10. (SBU) The Third Court of Appeals vacated the controversial decisions taken by judge Silvia de Leon de Miranda in the case of Enrique Rios Sosa, the 56-year-old former Army Chief of Staff and Minister of Defense accused of diverting \$4 million from the coffers of the National Mortgage Fund (CHN). The judge is widely believed to be in the sway of the FRG party run by Rios Sosa's father, former president Efraim Rios Montt. The judge, after excluding the appropriate prosecutors from the hearing, ordered Rios Sosa released on \$12,000 bond. Her decision was widely viewed as preferential treatment for Rios Sosa, and prosecutors complained to the Supreme Court, which essentially refused to question the judge's handling of the case but left the door open for an appellate court decision. Ironically, the Third Court of Appeals found that the judge had acted precipitously against Rios Sosa, not in his favor. In the court's opinion, prosecutors had not yet presented sufficient evidence against Rios Sosa to warrant even the minimal bail set by judge De Leon. Other observers, however, believe that was the point: to rush the case through before the evidence was ready and thus earn an acquittal. The Dec. 17 press reports that the Supreme Court, upon receiving "a more complete report," is now looking at taking action against Judge Silvia.

#### PDH on a Rampage

11. (U) Human Rights Ombudsman (PDH) Sergio Morales has scored a couple more dubious victories, getting the Constitutional Court (CC) to strike down taxes on gasoline and electricity. This all follows closely his successful effort to restore electricity subsidies for "poor" users who consume less than 300 KWH per month, a pool that includes some Embassy officers. As a result of the CC ruling against the gasoline distribution tax, the GOG is scrambling to cover a \$250 million shortfall for next year. The CC ruled that the imposition of both the value added tax and a distribution tax on fuel violated the Constitution's prohibition of "double taxation." There is room for lawyers to argue this point. The government's current thinking is to raise import duties to cover the shortfall until legislation can be passed to create a new single tax. The executive has delegated authority from the Congress to raise customs duties but must receive the blessing of Central Americas Council of Economic Ministers (COMIECO). At the PDH's behest, the CC also struck down a tax on electricity imposed by the Mixco municipality to cover the bill for its public lighting, recently enhanced in hopes of combating street crime. We gather that the solution to this problem, together with the problem of curbing subsidies, will have to await new legislation being prepared by the Ministry of Energy and Mines.

12. (C) The PDH is appointed by Congress and reports to it. Morales, who is widely believed to have political ambitions,

has carved out an agenda for the PDH that goes well beyond human rights into supposed "social and economic rights," and it is in this latter mandate that he acts as a consumer advocate. Even on conventional human rights issues he can be reckless in his statements, as he was in the wake of the Nueva Linda August 31 eviction when he groundlessly claimed there were "mass graves." Unable to stomach him any longer, President Berger on December 16 declared to the press that Morales was "mediocre, populist and myopic," noting that it was the middle and upper classes who benefit from Morales' ill-considered and "bad faith" actions.

Miners vs. Environmentalists: Advantage Miners  
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13. (C) While the energy side of the Ministry of Energy and Mines suffers the PDH's ventures into the "human rights" of energy pricing, the mining side is holding its own and starting to build some momentum, but it isn't always easy. Vice Minister Carolina Roca had hardly a moment to enjoy the resounding success of her international symposium on balancing mining and environmental interests (previewed in our last letter) before activists blockaded a road in Solola Department to prevent transport of a huge sixty-ton crusher drum belonging to Canadian-American firm Glamis Gold. Glamis had received permission to remove temporarily a couple pedestrian overpasses blocking progress on the road to the company's San Marcos site, when a crowd formed to stop the work. Local authorities reportedly were quickly assured that all was in order and the equipment was headed elsewhere (the locals are said to be jumpy, in part because a rumor of dubious provenance asserts that mining in Solola risks draining stunningly beautiful Lake Atitlan). Days later, however, the problem persisted, reportedly due to activists bussed in from elsewhere. Moreover, protestors were vandalizing the equipment. Roca told us that the government had decided this could not continue, and arrest warrants were being issued. Violence is always a possibility, but the government is determined that the project move forward.

14. (SBU) With anti-mining attention focused on the West and San Marcos, Canada's Skye Resources announced in Vancouver December 14 that it was being awarded an exploration contract covering the forty-year old (and abandoned) nickel concessions of Exmibal in the Eastern department of Izabal. Skye apparently jumped the gun: Roca had told us the local announcement would come on Dec. 16. Preventing Exmibal's reopening has for decades been the rallying cry of some of the more radical environmental NGOs, and they will see its reactivation as an affront by the government when they hear about it. We believe they do not yet know that the ministry also intends to open for public tender in January a number of new areas for petroleum exploration, along with renewing concessions that are due to expire. We reported earlier that Roca, rumored to become the new minister, would have her hands full with a crowded and controversial ministerial agenda. More recent rumors suggest that she is now slated to become chief revenue officer at the SAT.

Sosa Saved by Contracted Validation of his Monetary Policy  
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15. (C) Guatemala's Central Bank (BanGuat) contracted UCLA professor, National Bureau of Economic Research collaborator, former World Bank Chief Economist for Latin America and well-known Chilean Chicago graduate Sebastian Edwards for "advice" on Guatemala's monetary policy. Edwards recently delivered his results, with no surprises: he concluded that Guatemala faced no crises but that BanGuat could do better with a little more flexibility in addressing exchange rate fluctuations while maintaining a "perfected" inflation rate target as its central focus. There was, at first glance, something for everybody in the conclusion. Businessmen and government critics of BanGuat were told that they were right to be concerned with the quetzal's appreciation and that exogenous inflation (such as that caused by oil prices) should not be counted against the monetary policy target. The big winner, however, was Central Bank President Lizardo Sosa, who has been under pressure to resign by Berger. We gather that Berger, in turn, was acting at the behest of Plan of Government Commissioner (and former Finance Minister) Aitkenhead, who has been pressing for looser monetary policy to cause the quetzal to depreciate and monetize some of the fiscal deficit. In the end, Edwards validated Sosa's core argument that inflation must be the principal target, while exchange rate policy must be limited to stabilizing fluctuations, not fighting the long-term trend.

16. (C) The press reports that efforts to remove Sosa have ceased, at least for now. Edwards' report successfully undercut Berger's ability to portray Sosa's policies as errant. We also hear that Finance Minister Bonilla, Berger's choice to replace Sosa, intervened in the end with the President to say she would not accept the job if Sosa were forced out, as the damage to BanGuat's autonomy and excellent reputation would cost the country dearly. If so, our hats

are off to Bonilla -- not because we have strong feelings about Sosa's abilities (his VP is superb and runs the place) but because BanGuat is one of few local institutions that is fine as it is and should not be politicized.

#### IPR and Generics Still Out There

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17. (C) We're still spending hours per day on the effort to convince President Berger that he has to veto recent legislation that effectively eliminates data protection for pharmaceuticals and agricultural chemicals (reftel para 5; Guatemala 3188). Vice President Stein, Commissioner Mickey Fernandez, and a host of others appear to understand clearly that a failure to veto would likely doom the CAFTA. Fernandez tells us that El Salvador's President Saca raised this issue (at USTR's instigation) with Berger and apparently made an impression. Berger and senior administration officials were planning to meet to decide what to do late December 16 or sometime December 17. The Ambassador has repeatedly warned that anything short of a veto is not going to fly.  
HAMILTON